

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

STEUBEN FOODS, INC.,

Plaintiff,

v.

OYSTAR GROUP, ET AL.,

Defendants.

1:10-cv-00780-EAW-JJM
1:10-cv-00781-EAW-JJM
1:12-cv-00904-EAW-JJM
1:13-cv-00892-EAW-JJM
1:13-cv-01118-EAW-JJM

STEUBEN FOODS, INC.'S MOTION FOR BRIEFING

Plaintiff Steuben Foods, Inc. respectfully moves this Court for an Order authorizing the parties in the above-captioned cases to submit short briefs concerning a decision made public by the Patent Trial and Appeal Board of the United States Patent Office (the "Board") on May 8, 2019, in IPR2014-1235. IPR2014-01235 is directed to U.S. Patent No. 6,945,013, which is one of Steuben's asserted patents in these cases. As explained herein, the decision is relevant to the issues pending before the Court in connection with Steuben's Objections to Judge McCarthy's October 1, 2018, Report and Recommendation. The decision is appended hereto as Exhibit A.

Steuben proposes that the parties be granted permission to simultaneously file briefs of up to three pages within one week of any order authorizing such briefing. Steuben conferred with Defendants concerning this proposal. Defendants did not object to submission of the Board's decision to the Court, but they oppose Steuben's request for the parties to submit explanatory briefing of any relevance of the attached decision to the matters pending before the Court.

Steuben's requested briefing is appropriate because the Board's decision, which is fifty-six (56) pages, is in at least one respect relevant to the issues pending before the Court in

connection with Steuben's Objections to Judge McCarthy's Report and Recommendation dated October 1, 2018, and the Responses thereto by defendants Nestlé and GEA. In their response briefs and at length during the February 26, 2019 hearing on Steuben's Objections, Defendants have asked the Court to construe the claim term "aseptically disinfecting." The attached decision includes discussion of the meaning of that claim term. For example, the decision states that claim 19, which recites the claim term "aseptically disinfecting," "does not require the use of hydrogen peroxide or FDA approval." Exhibit A at 32. The decision also includes a discussion of the Federal Circuit's construction of the claim term "aseptically disinfecting." *Id.* at 11-13. As such, the decision is relevant to the issues pending before the Court, and Steuben respectfully submits that briefing on the decision is appropriate.

Respectfully submitted,

Dated: May 14, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served electronically on Defendants' counsel of record, this 14th day of May, 2019.

/s/ Joseph L. Stanganelli
Joseph L. Stanganelli